

United States District Court
Southern District of Illinois
East Saint Louis

Kenneth Rose
Movant, Pro Se

Case Number

v.

United States of America
Respondent

Brief in support of §2255 Motion to
Vacate, Set Aside, or Correct Sentence

This Brief is tendered to clarify and explain the issues presented in the several claims made in Rose's §2255 Motion. Nothing in this Brief, or in Rose's Motion, should be considered to be an attempt to withdraw his plea, or to otherwise invalidate the agreement and sentence imposed as it relates to the primary offense described in count 1.

Preliminary Statement

Under the principles of duplicity and multiplicity, multiplicity arises where the Government charges in separate counts what amounts to a single offense. As here, 18 U.S.C. §2113(d) has as an element the "use of a dangerous weapon" during the commission of the offense. Rose was additionally charged with 18 U.S.C. §924(c)(1)(A)(ii) which as an element requires the use, "by brandishing," of a firearm during the commission of a crime of violence. Since the 'use' of a 'dangerous weapon' is encompassed under both Statutes, Rose is entitled to consideration that his §924(c) conviction is part of the same act or transaction and which is eligible for removal.